

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re ACCREDO HEALTH, INC. SECURITIES LITIGATION) Civil Action No. 03-2216-BBD
)
) <u>CLASS ACTION</u>
<hr/> This Document Relates To:)
ALL ACTIONS.) LEAD PLAINTIFFS' MOTION <i>IN LIMINE</i> #22 TO PRECLUDE REFERENCE TO OR TESTIMONY RELATING IN ANY WAY TO COUNSEL'S PRIOR ASSOCIATION WITH CERTAIN LAWYERS OR LAW FIRMS
<hr/>)

Lead Plaintiffs, Louisiana School Employees' Retirement System and Debra Swiman (together, "Lead Plaintiffs") and the Class of investors who purchased Accredo stock between June 16, 2002 and April 7, 2003, respectfully move the Court for an order precluding Defendants from referring to, interrogating any witness concerning, commenting on, referencing, or introducing in any way evidence relating in any way to Lead Plaintiffs' counsels' prior association with certain lawyers or law firms. Certain of counsel for Lead Plaintiff Debra Swiman and the Class were previously associated with the law firm Milberg Weiss (d/b/a Milberg LLP) and former attorney William S. Lerach. The Milberg firm was indicted and Mr. Lerach was convicted of one count of conspiracy to commit obstruction of justice. None of these events are in any way related to this case or counsel for Ms. Swiman or the Class in this case. Accordingly, these matters are irrelevant to the issue of whether Defendants committed securities fraud, pursuant to Fed. R. Evid. 401 and are thus inadmissible pursuant to Fed. R. Evid. 402. Additionally, such matters could only serve to confuse and mislead the jury, unduly waste time and unfairly prejudice Lead Plaintiffs, and are thus inadmissible pursuant to Fed. R. Evid. 403.

In all cases presented to a jury, "proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means . . ." See Fed. R. Evid. 103(c). "Evidence which is not relevant is not admissible." Fed. R. Evid. 402. To be relevant, evidence need have some bearing on the probability of "the existence of any fact that is of consequence to the determination of the action." Fed. R. Evid. 401; *see also Black v. Ryder/P.I.E. Nationwide*, 15 F.3d 573, 587 (6th Cir. 1994) (quoting Fed. R. Evid. 401). Further, evidence may be excluded if it is relevant, but its probative value is "substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403. Unfair prejudice

within the meaning of Rule 403 “means an undue tendency to suggest [a] decision on an improper basis, commonly, though not necessarily, an emotional one.” *Id.*, Advisory Committee Notes.

While Lead Plaintiffs would hope that Defendants’ counsel would not stoop to attempts at disparaging opposing counsel, their deposition questioning in this case suggests they may do just that. To prevent such tactics, which plainly have no place in the courtroom and no relevance to the claims or defenses in this case, Lead Plaintiffs respectfully request that the Court enter an Order instructing Defendants not to refer to, interrogate any witness concerning, comment on, reference, or introduce in any way evidence relating in any way to Lead Plaintiffs’ counsels’ prior association with William S. Lerach or the law firm currently known as Milberg, LLP.

DATED: September 8, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 8, 2008.

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